

BRITISH COPYRIGHT COUNCIL

Response to the Patent Office consultation on Innovation: a Strategy for Support

(using the Template format provided)

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Organisation:

The Council is an association of bodies (see attached list) representing those who create, or hold interests or rights in literary, dramatic, musical and artistic works in which rights of copyright subsist under the United Kingdom's copyright law (Copyright, Designs and Patents Act 1988 as amended), and those who perform such works.

Introduction:

The Council welcomes this opportunity to contribute to the development of The Patent Office Innovation Support Strategy. We enjoy a very good relationship with The Patent Office which consults the Council on copyright policy matters including formal meetings held twice a year at which we discuss and debate topics of current interest with officials. The Council also works in partnership with The Patent Office in offering, on behalf of WIPO, an annual copyright training course for government officials from developing countries.

Copyright is the currency for creativity and as such plays an essential role for UK innovation; it is the means by which individual creators and performers earn a living and are guaranteed respect for their work; through copyright licensing (collective as well as individual), it is the lifeblood of the creative industries. Hence, "innovation" must include creators and the creative industries, making copyright a vital component in the Innovation Support Strategy now being proposed by The Patent Office. Failure to take copyright into account at a time when the creative industries are being recognised as a major economic contributor risks damaging our economic prosperity and ability to compete globally.

We have answered the questions in numerical order but wish to emphasise the following points with regard to copyright:

POLICY DEVELOPMENT

- Greater recognition of The Patent Office's contribution to the review and revision of copyright legislation at international level and a possible role for industry specialists in UK delegations;
- A more pro-active role in reviewing EU copyright legislation.

CONSULTATION

- A clearer place for copyright in the Innovation Support Strategy or, alternatively the development of a separate strategy for copyright;
- The British Copyright Council to have a wider role as a readymade consultative body for government on copyright matters.

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GUIDANCE & ADVICE TO BUSINESS

- Initiatives to clearly reflect unregistered as well as registered rights;
- Strong support for all efforts to raise the awareness and understanding of copyright amongst SMEs and microbusinesses in the creative industries;
- Collaboration and resource sharing between government, public information services and IP bodies to better deal with enquiries from business and from the public;
- Strong support for the development of comprehensive Internet based information services;
- Support for IP clinics for business, research into diversity;
- Support for the proposal to simplify and improve Copyright Tribunal procedures and for the introduction of a Patent Office Mediation Service.

EDUCATION & AWARENESS

- Integration of the CREATE principles into the Strategy;
- Support for the further development of the Think Kit and its integration into the National Curriculum;
- Initiatives aimed at improving press reporting of IP issues is welcomed by the Council;
- Internet information services should be an integral part of Patent Office education and awareness activities.

ENFORCEMENT

- With regard to the role of Trading Standards Officials, we recommend the proper implementation of Section 107A and 198A of the Copyright Designs and Patents Act 1988 as amended;
- We support the provision of specialist information packs on copyright enforcement;
- We support all improvements to IP crime intelligence gathering.

Q1. Is the strategy supportive of and complementary to other innovation support activities being pursued by other organizations?

It is difficult for us to comment, the focus on registered rights leaves room for another document on copyright. While providing example of activities and initiatives in the patent and trade mark fields there is little apparent awareness of, or reference to, innovation support activities being carried out in the copyright field and there are many initiated by both Government and by industry.

We seriously doubt whether it is possible to reduce creativity, or innovation for that matter, to the type of chart which appears at point 18 of Annex 1. Seeking to analyse creativity and innovation in this way is an oversimplification which throws no light on the innovative/creative process.

Q2. Which activities in the programme of activities appended to the strategy would you say should be the priorities for The Patent Office?

We believe that the key role of The Patent Office is in policy development and consultation but agree that it has a vital role to play in providing certain business support services and guiding others, and in education and awareness programmes for all forms of IP.

Annex A:

A1g The Office should also work in partnership with Skillset, the Sector Skills Council for the audio visual and photographic sectors;

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A2a It is vital to raise awareness and understanding of IP amongst SMEs whether as potential users of rights, or as creators and innovators. Any awareness raising exercise should include a review of the effectiveness of the Office's existing national awareness campaign. There is a particular challenge facing all those involved in work on IP awareness and education and that is recognition of the difference between those who are prepared to make their works freely available and those who earn their living from their creations or performances.

A4a We fully support this recommendation, but feel it is essential, certainly in the copyright field for The Patent Office and bodies such as the British Library, Citizens Advice, Business Links and Trading Standards Officials to work in collaboration with organisations such as the British Copyright Council and its members which spend a great deal of time responding to enquiries about all forms of IP received from members of the public. A great many of these callers are referred to the Council.

A4b The Council fully supports the development of IP clinics if they are also intended to provide information and advice about copyright.

A5 Equal opportunities for women and for minorities are not just a problem for inventors; it also arises within the creative professions.

A7 Individuals and SMEs who rely upon information from websites usually do not have a full understanding of the range of intellectual property rights. We are aware that many do not appreciate that protection of confidential information and copyright are available without formality to protect creative ideas and expressions – the BCC receives a significant number of enquiries about 'registering copyright'. If the Patent Office could ensure that its website and those of its partners more clearly reflect unregistered rights, then citizens and business would be better advised and have a greater chance of using the registration systems effectively as well.

By way of example, on the IP Europe website <http://www.ip-europe.org/>, one has to know that confidential information is called 'know how' before obtaining any advice on confidentiality. Clicking on "idea (not yet a concrete solution)" calls up an incomplete web page which suggests that ideas cannot be protected, only expression. Likewise clicking on "aesthetic creation" calls up a sequence of questions directed to design protection but gives no indication of the availability of copyright/authors' right.

Annex B:

B3 The Council fully supports Patent Office and industry co-operation on the development of the Think Kit. We believe this is an appropriate form of support activity for the Office.

We feel that publication on the Patent Office website of the Journalists' Guide to Intellectual Property at <http://www.patent.gov.uk/media/journalistguide/index.htm> has improved the quality of press reporting on IP issues. The availability of sound press items which do not mislead is of value to educationalists in gearing their treatment of IP to current events.

Annex E:

E1 We have already given our support to the proposal to simplify and improve the Office's tribunal procedures in our response to the Review of the Copyright Tribunal where we make the following suggestions:

- Reduce the cost and time involved in cases laid before the Copyright Tribunal;
- Lessen the adversarial nature of the Tribunal by simplifying procedures;
- Improve the expertise and balance of interests represented by Tribunal members;
- Raise awareness of authors' interests, as members of collecting societies, and as distinct from the collecting society itself;
- Consider potential issues for the future, such as the [potentially] increasing numbers of challenges on the scope of licences.

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E2 We have also expressed our strong support for the Office's proposal to provide Mediation Services. However, the Council and its individual members are confused about the extent to which the Mediation Service is intended to apply to the copyright community.

E3 On every possible occasion since the introduction of the Copyright Designs and Patents Act 1988 the Council has expressed its view that the proper implementation of Section 107A and Section 198A of the Act as amended, are absolutely vital if Trading Standards Officials are to have a meaningful involvement in combating all forms of IP crime. Training can only benefit Trading Standards Officials if they are already in a position to prioritise copyright crime.

Q3. Do you consider any of the proposed activities inappropriate for The Patent Office?

Annex A:

A7 As previously stated we support improvements by the Office to the level of IP guidance which it provides on the Internet. We also support the use of the Internet as an integral part of its awareness, education and training policies.

A6a We believe the Office should confine itself to encouraging others to organise and give awards and should not itself be directly involved in such events or activities.

A6c We are not sure we understand the intentions of the Office in relation to TV production companies. We suggest that such efforts might be better directed at broadcasters of which there are far fewer, and which commission programmes from production companies. We note that the programming referred to omits arts programmes, which we would like to see include positively phrased information on IP protection.

A7c While we think it is important that The Patent Office has a strategy in relation to education and awareness, and on the provision of education and awareness in the form of Internet information services, we do not think it is appropriate for the Office to be involved in developing a website for children.

A7e Though outwardly attractive, a comprehensive newsletter would require excessive use of resources and might better be left to organisations specialising in particular aspects of IP. A web based resource including advanced search facilities might work better than a hard copy newsletter but we feel that any publication would be better divided according to the particular aspects of IP which it addresses.

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Annex D:

D2 IP audits are essential for the health of UK businesses and we agree that many need to better understand the potential value of their IP. However, we feel that the resources of The Patent Office could be better used to provide guidelines and expertise on IP audits to other government agencies, such as the support services run by Regional Development Agencies, Business Links, etc. which are in a better position to provide such services direct to businesses, particularly those in the regions, Scotland and Wales.

Annex E:

E4 By their nature, insurance products are specifically tailored to particular industries, sectors or individual professions and we do not feel it is appropriate for The Patent Office to be involved in such services.

Q4. Are there any other activities you think The Patent Office should pursue?

Annex E:

E5 We strongly support the provision of comprehensive information packs on rights enforcement with specialised packs for copyright as well as for patents.

E6 Again, we support any improvements to IP crime intelligence gathering as a support activity but in this case the current and proposed service is patent specific and has no relevance for copyright. We understand that the Office has already undertaken considerable work in the copyright field and criminal intelligence is a major factor in solving copyright crime. This work should be acknowledged in the strategy.

Annex F: We would have liked to see some reference to the UK's contribution to the review and revision of copyright legislation at international level.

F1c We regret that the UK's role in reviewing EU legislation on copyright seems to be to take a re-active approach rather than a pro-active one when considering improvements to copyright legislation.

Data Collation & Distribution

We feel that The Patent Office could provide a central repository for government and industry data and information providing appropriate access and dissemination of the data. This would have at least four purposes:

- To demonstrate how IP is created and exploited and to demonstrate any weaknesses in the legal structure which may result from advances in technology;
- To help ministers and government understand industry concerns and to help them to take a lead in international negotiations for change to IP law;
- To facilitate preparation of briefings for ministers and officials on key topics which highlight the economic significance of IP and the increasingly important role played by the creative industries within the UK and in terms of export and attracting inward investment;
- To provide data to enforcement agencies.

Q5. Are there any activities in which you would like to partner the Office in Delivering?

Copyright consultation group: Though the Council engages with The Patent Office on a regular basis to discuss current policy and legislative developments, we would welcome the opportunity to consider with The Patent Office, the future expansion of the Council. By widening its remit only slightly, the Council could provide Government with a readymade consultative body including industry specialists, academics and creator and performer

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representatives and able to focus on copyright issues and copyright policy both immediate and for the future.

Information services: The British Copyright Council receives between 10 and 30 telephone enquiries a day from members of the public plus countless e-mails. Many of our members receive similar levels of enquiries about copyright, from the general to specific. None have the resources to deal with this level of enquiry and the public would benefit greatly from one central source of information. We would be very pleased to co-operate with The Patent Office on the development of an enquiry response service either Internet or telephone based.

Training: The Council would be pleased to work with The Patent Office on further training initiatives for copyright professionals and at the request of the WIPO Worldwide Academy is currently working on a proposal for a Training Course for judges from developing countries.

Representation at WIPO: We note that government delegations from the USA to WIPO include industry specialists and we believe that UK representation could benefit from the inclusion of specialists alongside officials.

We were disappointed to see no reference in the Strategy to the **CREATE principles** which are being promoted cross-government, and in which The Patent Office is playing a leading role, as a means of engaging bodies such as the CBI in IP and particularly copyright matters.

Q6. Do you have any other comments on the strategy?

We feel it is important to wait for the outcome of the Gowers Review of Intellectual Property before further development of The Patent Office Strategy for Supporting Innovation takes place.

Setting aside the lack of reference to copyright, the focus of this Strategy appears to be the relationship between innovation and businesses/SMEs. It contains very little on the needs of those individuals and microbusinesses which make up a large part of the creative industries as creators and performers. It seems likely that this applies also to individual inventors. The interests of creative individuals and microbusinesses are not always identical to those of businesses and SMEs and should be recognized in any Strategy to Support Innovation.

If the Strategy for Supporting Innovation is intended to apply to creativity and to individuals and microbusinesses as well as to SMEs and larger businesses, there is another aspect to copyright which should be taken into account and that is moral rights. These are the personal rights of the author and, in our view, they encourage respect for individual creators and performers and ultimately for creativity. Respect for rights is an important part of any campaign for greater awareness and IP education and moral rights should therefore be taken into account in the Strategy for Supporting Innovation.

Final Comment and Question:

Since starting work on this response, the Council has received a notice from The Patent Office which states that “it does not specifically focus on copyright and does not reflect the full range of activities in awareness and policy relating to copyright and the creative industries”. This leads us to ask whether there will be a further Strategy which does focus on copyright.

And if, as we have been informed, copyright is intended to be part of the Innovation grouping and if the use of innovation to promote competition is at least partly about the UK’s hugely successful Creative industries which are largely dependent on copyright, then surely the

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Innovation Support Strategy should include copyright as a major component and not as a side issue. If not then does the Government see innovation and creativity as two separate matters or does it indeed see copyright as a 'Cinderella' right?

The Council's comments may be made available to other parties.

The Council is happy to be contacted by The Patent Office on future occasions.

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